

RECORDATION NO. 1077325

*Matthews, Nowlin, Macfarlane & P*  
*Attorneys at Law*

AUG 28 1979 - 2 25 PM

INTERSTATE COMMERCE COMMISSION

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F. W. Baker  
Richard C. Goldsmith  
Ford C. Meyer, Jr.  
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Gilbert F. Vazquez

W. F. Nowlin (1902-1978)

Harper Macfarlane  
Grady Barrett  
of Counsel

3-2441120  
AUG 29 1979  
Date  
Fee \$ 50.00  
CC Washington, D. C.

1500 Alamo National Building  
San Antonio, Texas 78205  
(512) 226-4211

August 24, 1979

CERTIFIED MAIL #337121  
RETURN RECEIPT REQUESTED

Secretary of Interstate Commerce Commission  
Washington, D.C. 20423

Re: Filing Pursuant to 49 U.S.C. 11303  
of Documents Relating to Railroad  
Cars

Dear Sir:

Pursuant to 49 U.S.C. 11303, enclosed for filing and recordation are the original executed Railroad Car Lease Agreement dated June 21, 1979, between RailTex, Inc., a Texas corporation, as Lessor, and R & F Coal Company, an Ohio corporation, as Lessee, together with two certified true copies thereof.

Also enclosed is our check in the amount of \$50.00 in payment of your recordation fees.

The address of RailTex, Inc., is 4901 Broadway, Suite 221, San Antonio, Texas 78209, and the address of R & F Coal Company is P.O. Box 247, Cadiz, Ohio 43907. The railroad car lease agreement relates to 50 open top rail hopper cars with the mechanical designation HT, AAR car type code H 250, each of which is marked RailTex, Inc., San Antonio, Texas, as owner or manager, bearing the serial numbers TRAX 120-134, inclusive, 200-230, inclusive, and 300-303, inclusive.

After filing and stamping, please return the enclosed original and one copy thereof to this law firm.

*Matthews, Nowlin, Macfarlane & Barrett*

Secretary of ICC

Page 2

Aug. 24, 1979

Should you have any questions or need further information with respect to this matter, please contact the undersigned by collect telephone call at (512) 226-4211.

Thanking you for your cooperation, we are

Very truly yours,

MATTHEWS, NOWLIN, MACFARLANE & BARRETT

By *Lionel R. Fuller*  
Lionel R. Fuller

LRF:fm

Encl.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

9/11/79

**OFFICE OF THE SECRETARY**

Lionel R. Fuller  
Matthews, Nowlin, Macfarlane & Barrett  
1500 Alamo Natl Bld.  
San Antonio, Texas 78205

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/29/79 at 2:35pm, and assigned re-recording number(s). 10773

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

RECORDATION NO. 10773 Filed 1425

AUG 29 1979 - 2 05 PM

INTERSTATE COMMERCE COMMISSION

CERTIFICATE OF NOTARY PUBLIC  
PURSUANT TO 49 C.F.R., §1116.3(b)

STATE OF TEXAS      X  
                             X  
COUNTY OF BEXAR    X

I, the undersigned Notary Public in and for Bexar County, Texas, do hereby certify that I have compared the attached copy of the Railroad Car Lease Agreement dated June 21, 1979, executed by RailTex, Inc., a Texas corporation, as Lessor, and R & F Coal Company, an Ohio corporation, as Lessee, with the original document and that it is a true and correct copy thereof in all respects.

Dated: June 24, 1979.

Dianne J. Kotara  
Notary Public in and for Bexar County,  
Texas

My Commission Expires:

Jan. 17, 1981

DIANNE J. KOTARA  
Notary Public  
Bexar County, Texas

RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT, No. RF-01, made and entered into JUNE 21, 1979, by and between RAILTEX, INC., a Texas corporation with its principal office and place of business in San Antonio, Texas, (herein called "LESSOR") and R & F COAL COMPANY, an Ohio corporation, (herein called "LESSEE").

WITNESSETH:

Description  
of Leased  
Cars:

1. LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, the railroad cars shown on the Rider attached hereto and made a part hereof, and such additional Riders as may be added hereto from time to time by agreement of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereby including such facts as: number of cars, car initials and numbers, the Association of American Railroads ("AAR") or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental, term throughout which the cars shall remain in LESSEE's service, and other pertinent information that may be desired by both parties.

Use of  
Cars:

2. LESSEE agrees to use said cars under the following restrictions:

(a) The cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, LESSEE at its expense shall cause said cars to be returned to delivery point as stated in the Rider, or to such other point designated by LESSOR but at no cost to LESSEE greater than the charge for return to delivery point.

(c) The cars shall be returned to LESSOR in the same, or as good, condition in which they were delivered to LESSEE except for ordinary wear and tear.

(d) The cars will not be altered by LESSEE in any way without prior written approval of LESSOR.

(e) Mechanical unloading assistance devices, such as a car shaker, shall be operated only for that period of time necessary to dislodge material from the car. Operation beyond the

time the material is dislodged from the car shall constitute unnecessary abuse by LESSEE of the car.

(f) LESSEE shall notify LESSOR in writing within five (5) days of each change in routing, origin or destination of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in paragraphs 2(a) and 2(h) hereof.

(g) The cars are intended for use in carrying aggregate and coal type products, with individual material segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR.

(h) The cars will be operated only within the United States of America.

Rent:

3. LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until the cars are delivered to LESSOR upon expiration of the rental term specified in

the Rider applicable to such car. Such rentals shall be paid to LESSOR in San Antonio, Texas, or such other place as LESSOR may hereafter direct in writing. Payment will be made in advance on the first day of every month during the term, except that LESSEE shall pay in advance, on delivery of the cars, the pro rata of one month's rent for the period intervening between the date of delivery and the first day of the next succeeding month. The reservation fee of \$10,000.00 heretofore paid by LESSEE to LESSOR shall be applied in payment of the initial rentals due under this Agreement.

Mileage:

4. LESSOR shall collect all mileage earned by the cars and shall credit monthly to the rental account of LESSEE such mileage earned by the cars while in the service of LESSEE, as and when received from the railroads according and subject to all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder. The mileage refund will be at the then current rate.

Term of  
Lease:

5. This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental



term for each car shall be as shown in the Rider covering such car.

Repair and  
Maintenance:

6. LESSOR agrees to pay all costs of maintenance and repair to the cars described in the Rider, except for repairs required due to negligent acts or omissions of LESSEE, shipper, consignee, agent or sublessee, or as otherwise provided below in this paragraph. LESSOR shall make all contractual arrangements for all repairs, notwithstanding who is responsible for the costs thereof. LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. If cars are in a "BAD ORDER STATUS" for maintenance and/or repair in excess of five (5) consecutive days, the rental charges on each car shall be suspended during the excess period they are in such status. Rental charges will be suspended immediately for accident damage. Notwithstanding anything to the contrary provided herein, if any repairs are required as a result of the acts or omissions of LESSEE, its consignee, shipper, agent or sublessee or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR, or while stored on any private

siding or track or any private or industrial railroad, the rental charge shall continue during the rental period, and LESSEE agrees to pay LESSOR for the cost of such repairs, including transportation costs. LESSEE agrees that if by reason of such acts or omissions or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR or stored on any private siding or track or operated on any private or industrial railroad, any car is completely destroyed or in the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, LESSEE will pay LESSOR in cash the replacement value of such car within ten (10) days following a request by LESSOR for such payment. The term "replacement value" as used herein shall mean the valuation of such cars as provided for in the Interchange Rules of the AAR. In all events, LESSOR shall retain ownership of the car. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service as determined by LESSOR then LESSOR at its option may cancel the

lease as to such car as of the date on which such event occurred, or may substitute another car within a reasonable period of time, and in the event of such substitution, the substituted car shall be held pursuant to all the terms and conditions of this Agreement. LESSOR has the right to withdraw cars from service for the purpose of making nonsafety related repairs upon five (5) days' written notice to LESSEE. LESSOR shall have the right to substitute an equivalent car therefor. When damaged cars have been forwarded to a shop for repair, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be retained by LESSOR.

Indemnity:

7. LESSEE will indemnify LESSOR against any loss, damage, claim, expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising, directly or indirectly, out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Lease, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the fault or

neglect of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfy such responsibility or where a railroad has control of the car. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

Insurance:

8. LESSEE shall, at its own cost and expense, with respect to each car at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed by LESSEE under paragraph 7 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request. LESSEE's obligation to maintain insurance with respect to each car shall commence on the delivery date of such car and shall continue until the lease term thereof terminates and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

Additional  
Charges by  
Railroad:

9. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance

with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE shall pay LESSOR for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

Right of  
Entry:

10. LESSOR shall have the right to enter the property of LESSEE or its agent, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs.

Reports:

11. LESSOR shall collect and retain all data necessary for making mileage, per diem and "Bad Order Status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein.

Payment  
of Taxes:

12. During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all sales and use taxes and governmental charges based upon the use of the cars. LESSOR

shall pay all property taxes and other governmental charges based upon ownership of the cars. LESSEE shall be under no obligation to pay any sales or use tax and governmental charges so long as it is being contested in good faith and by appropriate administrative or legal proceedings and any expense incurred by LESSOR in which LESSEE concurs with respect to contesting the applicability of such sales and use taxes and above mentioned governmental charges to this Agreement shall be for the account of LESSEE.

Liens:

13. LESSEE shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect car owner's title.

Marking  
of Cars:

14. LESSEE shall keep all cars subject to this Lease free of any markings which might be interpreted as a claim of ownership, nor shall LESSEE change the identifying numbers.

Subleasing:

15. LESSEE shall first obtain LESSOR'S written consent prior to subleasing said cars or assigning any of its rights hereunder, which written consent LESSOR shall not unreasonably withhold. If requested by LESSEE, LESSOR will exert its best effort to arrange for subleasing of cars.

Remedies:

16. Upon the happening of any of the events of default as hereinafter defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or its assignee as the case may be, either:

(a) Declare the Agreement terminated, in which event all rights of the parties hereunder shall cease except only the obligation of LESSEE to pay accrued rentals and other charges to the date of retaking, or;

(b) Relet the cars as agent of LESSEE, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new lessee, then to the payment of the rent and charges due under this Lease. LESSEE shall remain liable for any rents and charges remaining due after so applying the proceeds so realized, and LESSEE agrees to pay said deficit monthly as the same may accrue. LESSEE shall bear all costs involved in LESSOR retaking the cars, including transportation costs to San Antonio, Texas.

Default:

17. The happening of any of the following events shall be considered an "event of default":

(a) Nonpayment of LESSEE within thirty (30) days after the same becomes due of any installment of rental.

(b) Failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days after receipt of written notice from LESSOR demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of LESSEE hereunder within thirty (30) days after such appointment.

Filing:

18. LESSOR intends to cause this Lease to be filed and recorded with the ICC in accordance with Section 20(c) of the Interstate Commerce Commission Act. LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title



and rights, or for the purpose of carrying out the intention of this Agreement, and LESSEE will promptly furnish to LESSOR certificates or other evidences of all such filing, registering and recording in form satisfactory to LESSOR. LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Inspection  
of Car:

19. Each of the cars shall be subject to LESSEE's inspection before delivery; and the acceptance thereof by LESSEE shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting any commodities then and thereafter loaded therein and (ii) that it is one of the cars described in the Riders.

Disclaimer  
of Warranties:

20. LESSOR LEASES THIS EQUIPMENT, AS IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO: (a) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY CARS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (b) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP

IN, THE EQUIPMENT, OR (c) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

Ownership  
of Cars:

21. Certain of the cars leased hereunder and identified on the Rider attached hereto may not be owned by LESSOR. In each such case, the car or cars so identified are owned by third persons who have appointed LESSOR to manage and supervise the operation of such cars, including the leasing thereof, pursuant to Management Agreements entered into by such owners and LESSOR. Notwithstanding the provisions of paragraph 20 hereof, LESSOR warrants and represents that it has the right to lease such cars and that the Management Agreements granting such right are in full force and effect, neither LESSOR nor the respective owners of the cars are in default thereunder and the Management Agreements are valid, binding and enforceable against LESSOR and the respective owners of the cars in accordance with their terms.

Renewal:

22. At the expiration of the initial rental term, LESSEE shall have the option to renew this Agreement covering those cars listed in the Rider for a period of not less than ninety (90) days nor

more than three (3) years from the date of termination of the original rental term of the car or cars covered hereunder. Notice of the exercise of this option shall be given, in writing, by LESSEE to LESSOR at least ninety (90) days prior to the expiration of the rental term of the car or cars covered hereunder.

Miscellaneous:        23. It is mutually agreed that the time of payment of rentals is of the essence of this Agreement and that this Agreement and any Rider now and hereafter entered into is subject and subordinate to any Security Agreement or Conditional Sale Agreement on the cars heretofore or hereafter leased and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by LESSOR.

Notice:                24. All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given in writing and delivered personally or sent by registered or certified mail, return receipt requested. The respective addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

Governing  
Law:

25. The terms of this Agreement and all  
rights and obligations hereunder shall be governed  
by the laws of the State of Texas, in which state  
it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this  
instrument to be signed and sealed by their respective corporate  
officers and duly attested, as to the date first above written.

RAILTEX, INC. (LESSOR)

(Corporate Seal)

ATTEST:

Samt Lennie Flohr  
Secretary

By Bruce M. Allen  
President

R & F COAL COMPANY (LESSEE)

(Corporate Seal)

ATTEST:

Joseph L. White  
Asst. Secretary

By Jack D. Hughes  
President

RAILTEX, INC.

Rider No. 01  
To Master Agreement No. RF-01

It is hereby agreed that, effective JUNE 21, 1979, this Rider shall become a part of Master Car Agreement No. RF-01 between RailTex, Inc. and R & F Coal Company, dated JUNE 21, 1979, and the cars described herein shall be placed in service, subject to the terms set forth below:

CAR NUMBERS:	120 thru 134, inclusive 200 thru 230, inclusive 300 thru 303, inclusive
CAR MARKS:	TRAX
CLASS OF CAR:	HT/H250
NUMBER OF CARS:	Fifty (50) Cars
CAPACITY OF CARS:	Minimum: 2,567 cu. ft. Maximum: 2,730 cu. ft.
DELIVERY POINT:	Benwood, West Virginia unless Lessee otherwise specifies.
DATE OF DELIVERY:	R & F shall have the right to designate any date of delivery between the dates of July 1, 1979, through October 1, 1979. R & F agrees to give RailTex sixty (60) days' advance written notice of the date of delivery it chooses. RailTex shall deliver, at a minimum, one-half of the cars by the date R & F designates and shall deliver all of the cars no later than twenty (20) days after the designated delivery date, except for those cars which are in "Bad Order" status.
TERM:	24 months from delivery date of first 25 cars.
CERTIFICATION OF INSPECTION AND ACCEPTANCE:	Exhibit "A" attached hereto and made a part hereof.
TERMS OF RENT:	\$13.43 per car, per day, from date of delivery acceptance plus 4.2¢ per car mile, loaded or empty, with 1,500,000 miles aggregate per year minimum.

ESCALATION OF RATES:

Rent is increased \$0.004 per car,  
per mile, for each one percent (1%)  
or fraction thereof of the increase  
of the AAR labor rate for foreign  
car repair billing over the per hour  
rate in effect.

(SEAL)  
ATTEST:

Janet Lenine Flohr  
Secretary

RAILTEX, INC. (LESSOR)

By Ernest M. Galt  
President

(SEAL)  
ATTEST:

Janet F. Flohr  
Secretary

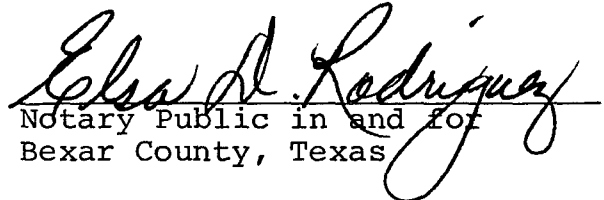
R & F COAL COMPANY (LESSEE)

By Jack D. Hughes  
President

STATE OF TEXAS       §  
                             §  
COUNTY OF BEXAR     §

BEFORE ME, the undersigned authority, on this day personally appeared Bruce M. Flohr, President of RailTex, Inc. a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said company.

Given under my hand and seal of office, this 21 day of June, 1979.

  
Notary Public in and for  
Bexar County, Texas

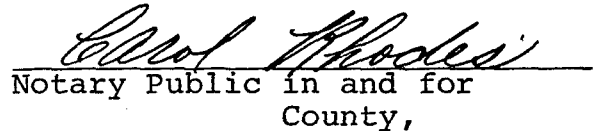
My Commission Expires:

April 19, 1980

STATE OF Ohio       §  
                             §  
COUNTY OF Harrison     §

BEFORE ME, the undersigned authority, on this day personally appeared Jack D. Hughes, President of R & F Coal Company, an Ohio corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said company.

Given under my hand and seal of office, this 21<sup>st</sup> day of June, 1979.

  
Notary Public in and for  
County, \_\_\_\_\_

My Commission Expires:

CAROL RHODES, Notary Public  
Belmont, Harrison and Jefferson Co., Oh.  
My Commission Expires June 16, 1981